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AUG 24 2004

OFFICE OF PETITIONS

In re Application of :
Enns, et al. :
Filed: December 2, 2003 : ON PETITION
Application No. 10/725,919 :
Atty. Dkt. No.: 0733MH-42278C :

This decision in response to the "PETITION TO OFFICE OF PETITIONS," filed July 12, 2004. This petition is being treated as a petition to enter the previously omitted drawings into the application and accord the application a filing date of December 2, 2003.

The petition is **GRANTED TO THE EXTENT INDICATED HEREIN.**

The application was submitted December 2, 2003. On May 12, 2004, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application ("Notice"). The Notice indicated that the application had not been accorded a filing date because the application was deposited without drawings as required under 35 USC 113 (first sentence). The Notice indicated the filing date of the application would be date of receipt of the omitted items. Any assertion that the omitted items were in fact submitted or are not necessary for a filing date must be by way of petition.

Petitioners argue that the application, as submitted, included drawings labeled Figures 1-5. Petitioners have included a copy of the eleven (11) sheets of drawings featuring Figures 1-5. The petition includes the declaration of S. Bradshaw who declares while having no specific recollection of filing of the instant application, declarant would, as a matter of course, have ensured the drawings were filed with the application. The petition also includes the declaration of M. Hunn who declares the application as filed included a complete copy of the application, including the drawings.

The arguments and evidence submitted by petitioners have been considered, but are not persuasive. The USPTO file is the official record of the papers originally filed in this application. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the

allegation by a preponderance of the evidence. A review of the official file reveals that the application as filed lacked drawings.

The declarations of S. Bradshaw and M. Hunn rely upon the declarants' recall of routine events that occurred nearly seven months earlier and are not more persuasive than the record of what was filed as shown in the official file. Accordingly, the fact that the declarants believe drawings were among the papers filed is not more persuasive than the actual papers shown to have been received by the official file.

The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt that itemizes and properly identifies the papers that are being filed serves as *prima facie* evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See section 503, Manual Of Patent Examining Procedure (MPEP 503).

While petitioners state the package containing the application papers included a return postcard, the petition does not include a copy of the return postcard alleged to have been included with the application papers.

Thus, petitioners have failed to establish to the satisfaction of the Director that the application papers submitted December 2, 2003 included drawings.

Thus, the petition to enter the drawings submitted on petition into the application is **DISMISSED**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

As stated in MPEP 601.01(f), it is the practice of the PTO to treat a non-provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence).

Moreover, MPEP 601.01(f) states that a nonprovisional application having at least one claim, or a provisional application having at

least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors. Should the Technology Center determine that drawings are necessary under 35 U.S.C. 113 (first sentence) the filing date issue will be reconsidered by the USPTO.

A review of the official file reveals that the instant application includes at least one method claim. As it is USPTO practice to treat a non-provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary, the Notice of Incomplete Application mailed May 12, 2004 was mailed in error and is hereby withdrawn.

Accordingly, the petition to accord the application a filing date of December 2, 2003 is GRANTED.

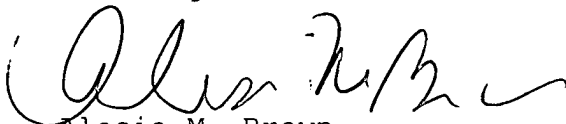
Petitioners are advised to submit a second preliminary amendment prior to the issuance of the first Office action to amend the application to include Fig. 1-5.

The application will be processed with only the papers present on filing with a filing date of December 2, 2003, without drawings as part of the original disclosure.

No fee is due in connection with this matter. A refund from the Finance Office, Refund Section has been requested on petitioners' behalf.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of December 2, 2003.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.



Alesia M. Brown
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